

**APPENDIX J**

**SOIL O&M TRUST AGREEMENT**

# WAUKEGAN MANUFACTURED GAS AND COKE PLANT SUPERFUND SITE

## TRUST FUND AGREEMENT

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## WAUKEGAN MANUFACTURED GAS AND COKE PLANT SUPERFUND SITE TRUST FUND AGREEMENT

This Trust Fund Agreement ("Agreement") dated \_\_\_\_, 2004, by and between the entities whose authorized representatives have executed this Agreement (the "Grantor") and the \_\_\_\_\_ Bank, not personally but solely as Trustee hereunder, (the "Trustee"):

## **RECITALS**

WHEREAS, without admitting any liability, the City of Waukegan ("Grantor" or "City"), General Motors Corporation ("GM") and North Shore Gas Company ("NSG") (GM and NSG may be referred to herein collectively as "Performing Settling Defendants" or "PSDs") have entered into a Consent Decree with the EPA captioned U.S. V. CITY OF WAUKEGAN ET AL., No. \_\_\_\_\_, REMEDIAL ACTION CONSENT DECREE (the "Consent Decree") in which the PSDs and Grantor have agreed to reimburse the EPA for environmental response costs incurred at the Waukegan Manufactured Gas and Coke Plant Superfund Site in Waukegan, Illinois (the "Site"), and/or to finance and perform certain future work at the Site;

WHEREAS, the Grantor and the PSDs wish to establish a trust fund, the Waukegan Manufactured Gas and Coke Plant Soil O&M Escrow Account Trust Fund which shall satisfy the trust fund requirements of the Consent Decree for the funding of Soil O&M portion of the Work, for the primary purpose of facilitating the payments and performing the Soil O&M Work required under the Consent Decree;

Whereas, pursuant to the Consent Decree, the Grantor shall perform the Soil O&M portion of the Work with funds from the Trust Fund; NOW, THEREFORE, the Trustee hereby agrees that it will hold, manage, invest and reinvest the funds contributed to the Soil O&M Escrow Account, and any income earned thereon, consistent with this Agreement together with any other property hereafter conveyed, assigned, transferred or paid to it, as Trustee, in trust, subject to the terms, provisions and conditions set forth herein.

### **1. DEFINITIONS**

As used in this Agreement:

- 1.1. The term "**Trust Fund**" shall mean the trust fund, or trust funds established pursuant to this Agreement to satisfy the requirements of the Consent Decree that a Soil O&M Escrow Account be established and funded by the Performing Settling Defendants to pay the estimated cost of long terms Soil O&M, and to the extent allowed, to comply with Section 468B of the Internal Revenue Code and the Treasury Regulations promulgated thereunder;
- 1.2. The term "**Grantor**" shall mean the City whose authorized representative has executed this Agreement and the Consent Decree;

- 1.3. The term "Trustee" shall mean the \_\_\_\_\_ Bank, its corporate successors and any successor or successors to such Trustee appointed in the future, but in no event shall any such Trustee or successor Trustee be a "related person" as defined in Treas. Reg. § 1.468B-1(d)(2).
- 1.4. The term "Contractor" for purposes of the work to be performed under the Consent Decree shall mean a qualified person or entity selected and engaged by the City of Waukegan, including employees of the City or other units of government including, but not limited to, the Waukegan Park District, or in the event of a work takeover by EPA, by EPA pursuant to the Consent Decree for the purpose of performing the Soil O&M Work required by the Consent Decree;
- 1.5. All other capitalized terms in this Agreement shall have the meanings defined in the Consent Decree unless specifically defined herein.

2. **NAME, PURPOSE OF THE TRUST AND ACCEPTANCE OF THE TRUSTS**

- 2.1. This Trust shall be known as the Waukegan Manufactured Gas and Coke Plant Superfund Site Soil O&M Escrow Account Trust Fund (the "Soil O&M Escrow Account") as that term is defined in the Consent Decree. The purpose of the Trust is to obtain, hold, invest and disburse funds, and income earned thereon, as directed by the Grantor so that the PSDs may satisfy their obligation to fund the Soil O&M portion of the Work pursuant to the Consent Decree.
- 2.2. The Trustee undertakes to perform such duties and only such duties as are specifically set forth in the Agreement and no implied covenants or obligations should be read into the Agreement against the Trustee.
- 2.3. The Trustee may execute any of the trusts and perform any of its duties by or through attorneys, agents, receivers or employees, shall be responsible for the conduct of same in accordance with the standards set forth in Section 2.5 below, and shall be entitled to the advice of counsel concerning all matters of the trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to any such attorneys, agents, receivers or employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Grantor) approved by the Trustee after providing notice to the

Grantor of the its intent to solicit such opinion or advice in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith reliance upon such opinion or advice.

- 2.4. The Trustee may act upon any notice, request, consent, certificate, Consent Decree, affidavit, letter, telegram or other paper or document believed to be genuine and correct, and to have been signed or sent by the proper person or persons based upon written notification to the Trustee by the Grantor or the person or persons authorized by the Grantor to request actions by the Trustee.
- 2.5. The permissive right of the Trustee to do things enumerated in this Agreement shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence, gross negligence or willful misconduct or that of its attorneys, agents, receivers or employees.
- 2.6. Before taking any action the Trustee may require that an indemnity bond satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its willful default by reason of any action so taken.
- 2.7. The Grantor acknowledges and agrees that the Trustee does not make any representations, warranties or covenants regarding compliance of the Trust Funds or this Agreement, or any of the Trustee's acts or omissions, with Section 468 of the Internal Revenue Code or the Treasury Regulations promulgated thereunder.

3. **CONTRIBUTIONS TO THE TRUST FUNDS**

- 3.1. **Initial Payments by PSDs.** Pursuant to the Consent Decree the Performing Settling Defendants will contribute \$\_\_\_\_\_ funds to the Trust Fund within 30 days of receipt by the PSDs of the EPA Certification of Completion of the Soil RA. The Trustee will provide notice of each PSD's payment into the Trust to the other PSD, the Grantor and to the EPA within 30 days of the Trustee's receipt of each such payment.

- 3.2. **Additional Contributions.** The City may, but is not required to, make additional contributions to the Trust Fund to ensure the uninterrupted progress and timely completion of its obligations pursuant to the Consent Decree. The Performing Settling Defendants shall have no funding obligations beyond the initial funding in the amount of \$\_\_\_\_\_.
- 3.3. **Shortfall.** If either of the Performing Settling Defendants fails to make a contribution pursuant to Section 3.1 of this Agreement, the Trustee shall promptly demand that the remaining Performing Settling Defendant pay such shortfall within thirty (30) days after receipt of the demand, or such shorter period as may be specified in the demand.
- 3.4. **Nature of Contributions to the Trust Fund.** All contributions to the Trust Fund shall be made in immediately available funds. All such contributions, together with the earnings thereon, shall be held as a trust fund for performance of the Soil O&M portion of the Work. Contributions made to the Trust Fund shall not be construed as fines, penalties or monetary sanctions.
- 3.5. **No Transferability of Interest.** The interests of the Grantor and the PSDs herein, and their obligation to provide funds, if any, under this section, is not transferable, except to a successor corporation or corporations, and any such transferee corporation shall assume the obligations of the transferring Grantor(s) by executing such documents as the Trustee may require.

4. **DISPOSITIVE PROVISIONS**

- 4.1. **Payment of Income and Principal.** During the term of this Agreement, and to the extent of the funds remaining in the Soil O&M Escrow Account Trust Fund, the Trustee shall, on behalf of the Grantor, pay all invoices of a Contractor that the Grantor submits to the Trustee that include the Grantor's validly executed **Payment Authorization, in the form attached as Exhibit A hereto**, that the invoice was incurred in compliance with the requirements of the Consent Decree. Upon receipt by the Trustee of a final, non-appealable Determination by the EPA that the Grantor is not performing its Soil O&M Work obligations pursuant to Consent Decree, the Trustee shall disburse the remaining funds, after payment of any outstanding Trustee Compensation pursuant to Paragraph 8, in the Trust Fund to the EPA by remitting the funds by FedWire Electronic Funds

Transfer ("EFT") to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO File Number \_\_\_\_\_, WMG & CP Site/Spill ID Number 05JB, and DOJ Case Number 90-11-3-07051. with a copy to the Grantor.

- 4.2. **No Authority to Conduct Business.** This Agreement shall not be construed to confer upon the Trustee any authority to carry on any business or activity for profit; provided, however, that the Trustee may invest the Trust Funds in accordance with this Agreement.
- 4.3. **Termination of the Trust Funds.** The Trust Fund shall terminate upon the occurrence of one or more of the following: (a) termination of the Consent Decree; (b) exhaustion of the income and principal of the Trust Fund pursuant to Section 4.1; or (c) upon receipt by the Trustee of a final, non-appealable Determination by the EPA that the Grantor is not performing its Soil O&M Work obligations pursuant to Consent Decree. In connection with receipt of the final Determination as described in clause (c) above, the Trustee shall be entitled to receive, and may conclusively rely upon, an opinion of counsel to the presenting party to the effect that such Determination is final and non-appealable.
- 4.4. **Distribution of Trust Funds Upon Termination.** Upon termination of the Trust Fund, the Trustee shall distribute any remaining Trust Fund balance, after payment of the Trustee's fees, costs and expenses, to the Grantor, in the event that the Trust Fund is terminated in accordance with Paragraph 4.3(a), or to the EPA in the event that the trust is terminated in accordance with 4.3(c).
- 4.5. **Alterations, Amendments and Revocation.** This Trust may be altered, amended, or revoked by a written instrument executed by an authorized representative of the Grantor and written approval of EPA, provided, however, that no such alteration, amendment or revocation may conflict with or modify in any respect the Grantor's obligations under the Consent Decree, and provided further that: (a) Section 12 hereof shall not be revoked and shall not be altered or amended to limit the effect thereof with respect to acts or omissions taken or made up to thirty (30) days after such alteration or amendment; and (b) no such alteration, amendment or revocation is adverse to the interests of the Trustee.



The Trustee shall have no duty to determine whether the conditions for alteration, amendment or revocation have been satisfied, but instead shall be entitled to rely upon the signature of the Grantor on the instrument.

**5. TRUSTEE MANAGEMENT**

The Trustee shall invest and reinvest the principal and income of the Trust Funds and keep the Trust Funds invested in a Money Market Fund, or such other investment fund as the Director of Finance for Grantor may instruct the Trustee in writing so long as the selected investment fund is located in the United States or guaranteed by agencies of the United States, and treated as a single fund without distinction between principal and income. All investments shall be made so as to at all times provide sufficient liquidity to meet the anticipated cash needs of the Trust Fund. The Trustee, with the prior approval of the Director of Finance of the Grantor, may engage the services of an investment advisor or manager, may rely on the advice of such advisor or manager, and may delegate investment decision-making authority to such advisor or manager with respect to management of the Trust Funds. The Trustee shall not be personally liable for any action or inaction taken in good faith reliance on the advice of such advisor or manager, nor for delegation in good faith of investment decision-making authority to such advisor or manager. The Trustee shall keep or arrange to be kept an accounting of all contributions to and disbursements from the Trust Funds.

**6. EXPRESS POWERS OF TRUSTEE**

Without in any way limiting the power and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered as follows:

- 6.1. Payment of Expenses of Administration.** To incur and pay any and all charges, taxes and expenses connected with the Trust Fund in the discharge of its fiduciary obligations under this Agreement, which charges, taxes and expenses shall be subject to periodic review and audit by the Director of Finance for the Grantor or EPA. All such payments shall be made using the assets of the Trust Fund.

- 6.2. Preservation of Principal.** Notwithstanding any other provision in this Agreement, to at all times hold, manage, invest and reinvest the assets of the Trust Fund in a manner designed to preserve the accrued income and principal of the Trust Fund for the purposes of the Trust Fund.
- 6.3. Retention of Investment Advisor and Other Consultants.** With the prior approval of the Grantor, and pursuant to Section 14, to engage the services of (and pay compensation to) an investment advisor, accountants, agents, managers, common counsel, or other consultants with respect to the management of investments of the Trust Fund, the management of the Trust Fund, or any other matters.
- 6.4. Execution of Documents of Transfer.** To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- 6.5. Extension of Obligations and Negotiations of Claims.** Upon obtaining the approval of, or direction from, the Grantor to renew or extend the time of payments of any obligation payable to or by the Trust Fund for such periods of time and upon such terms as the Trustee may determine, and, upon obtaining the approval of, or direction from, the Grantor to compromise or otherwise adjust all claims in favor of or against the Trust Fund. This paragraph shall not affect the distribution of all remaining funds to the EPA in accordance with Paragraph 4.3(c) of this Agreement.
- 6.6. Litigation.** Upon obtaining the approval of the Grantor pursuant to Section 14, and upon receipt of any indemnity it may require, to institute and defend litigation in the name of the Trust Fund on behalf of or in the name of some or all of the Grantor.
- 6.7. Execution of Contracts and Agreements.** At the direction of the Grantor, to make, execute, acknowledge and deliver any and all contracts or agreements on behalf of the Trust. For any contracts entered into by the Trust or executed by the Trustee on behalf of the Trust at the direction of the Grantor:

- (a) The Trustee shall not have any duties or responsibilities for supervision or oversight of contract performance;
- (b) The Trustee shall not have any duties or responsibilities for signing waste manifests, waste shipping documents, waste stream characterization documents or land disposal restriction certifications;
- (c) The Trustee shall not have any authority to control or operate the WMG & CP Site;
- (d) All contracts shall provide that any party to the contract will claim only against the Trust and Trust Fund for payment or to satisfy its claims or liabilities; and
- (e) The Trustee may rely upon the direction of the Grantor as conclusive evidence that the contract or agreement is in furtherance of the purposes of the Trust Fund.

6.8. **Discretion in Exercise of Powers.** To do any other acts that it deems proper to effectuate the purpose of this Agreement and to exercise the powers specifically conferred upon it by this Agreement.

7. **ADVICE OF COUNSEL**

The Trustee may from time to time consult with experts and counsel, who may be (but is not required to be) counsel to the Grantor, with respect to any question arising from this Agreement. The reasonable costs of any such expert and counsel shall be paid from the Trust Fund or as otherwise provided in Section 9 provided that the Grantor was provided notice of the intent to engage such expert or counsel, together with such information on fees and rates as it may reasonably request. The Trustee shall be fully protected, to the extent permitted by law, in acting in reliance upon the advice of counsel.

8. **TRUSTEE COMPENSATION**

The Trustee shall be compensated for all of the services provided under this Agreement and reimbursed for its costs, in accordance with the schedule of fees and costs in effect on the effective date of this Agreement and as provided to the Grantor or as otherwise

modified by agreement of the Trustee and the Grantor during the period over which its services are performed. The Trustee may pay such fees and costs from the Trust Fund, or if the amounts on deposit are insufficient such fees and costs shall be paid by the Grantor. The Trustee's schedule of fees and expenses is attached hereto as Exhibit B.

**9. SUCCESSOR TRUSTEES**

- 9.1. Vacancy Caused by Resignation or Removal.** The Trustee may resign at any time by delivering a resignation to the Grantor and the EPA. The Grantor may remove any Trustee by delivering notice of such removal in writing to such Trustee. Any such resignation or removal shall take effect within thirty (30) days of delivery of the notice of resignation or removal, or upon the acceptance of an appointment, in writing, by a successor Trustee, whichever is earlier.
- 9.2. Appointment of Successor Trustees.** Any vacancy in the office of Trustee created by dissolution, resignation or removal by the Grantor shall be filled by the Grantor by an appointment in writing of a successor Trustee. The Grantor shall so notify EPA of the successor Trustee within 7 days of the appointment. If any such vacancy in the office of Trustee is not filled by the Grantor within fourteen (14) days after the receipt by the Grantor of a written request by the EPA Regional Administrator to do so, such vacancy may be filled by an appointment of a successor Trustee by a court of competent jurisdiction. In no event shall any successor trustee appointed hereunder be a "related person" as defined in Treasury Regulation Section 1.468B-1(d)(2).
- 9.3. Acceptance of Appointment by Successor Trustees.** Acceptance of appointment as a successor Trustee shall be in writing and shall become effective upon receipt by the Grantor of notice of such acceptance. Upon the acceptance of appointment of any successor Trustee, title to the Trust Fund shall thereupon be vested in said successor Trustee, without the necessity of any conveyance or instrument. Each successor Trustee shall have all the rights, powers, duties, authority, and privileges as if initially named as a Trustee in this Agreement.
- 9.4. Preservation of Record of Changes to Trustees.** A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be

attached to an executed counterpart of this Agreement in the custody of the Grantor.

**10. INSTRUCTIONS TO THE TRUSTEES**

Notwithstanding anything herein to the contrary, the Trustee is hereby directed to do the following in addition to other duties set forth in other provisions of this Agreement:

- 10.1. Reports.** Have prepared quarterly financial reports during the term of the Trust, describing the manner in which all of the assets of the Trust Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Trust Fund. Copies of such reports shall be transmitted by the Trustee in writing to the Grantor and EPA.
- 10.2. Annual Statement and Tax Returns.** Have prepared annual financial statements during the term of the Trust, describing the manner in which all of the assets of the Trust Fund are then invested and the current market value of such assets, as well as the obligations, income and expenses of the Trust Fund. All financial statements shall be prepared on an accrual basis, and shall be in accordance with Generally Accepted Accounting Principles, applied on a consistent basis. The Trustee shall prepare and file such tax returns as shall be required by applicable law and as directed by the Grantor. Copies of such annual statements and tax returns shall be transmitted by the Trustee in writing to the Grantor and EPA.
- 10.3. Counsel.** Advise, consult and confer with and otherwise inform the Grantor upon any request by the Grantor with respect to matters arising out of this Agreement, administration of the Trust Fund, or any other matter which the Trustee, in its discretion, deems appropriate to bring to the attention of the Grantor.
- 10.4. Records.** Maintain records of all actions taken by the Trustee with respect to matters arising out of this Agreement or administration of the Trust Fund. Copies of said records shall be provided to the Grantor, upon request, and upon termination of the Trust Fund, said records shall be transmitted, together with all other records of the Trustee, to the Grantor and to EPA. The Trustee shall have

the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of Grantor has occurred.

**11. INDEMNITY**

**11.1. Indemnity.** Each Trustee, whether initially named or appointed as a successor Trustee, acts as a Trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustee, or any of them hereunder in good faith, all persons shall look solely to the Trust Fund and not the Trustee personally or the Grantor. Neither the Trustee nor the Grantor shall incur any liability, personal or corporate, of any nature in connection with any act or omission, made in good faith, of the Trustee or the Grantor in the administration of the Trust Fund or otherwise pursuant to this Agreement. The Trustee initially named, appointed as successor Trustee by the Grantor, or appointed by a court, shall be indemnified and held harmless by the Trust Fund, and, to the extent that indemnification cannot be obtained from the Trust Fund, jointly and severally by the Grantor, for any loss, cost, expense, damage, claim, cause of action, Consent Decree or direction of any regulatory agency, any attorneys' fees, accountants' fees, expert witness fees and costs arising out of or pertaining to (a) the Site, (b) this Agreement, (c) any contracts, agreements or obligations entered into or incurred by the Trust Fund, (d) any acts or omissions of the Trustee in carrying out, or in good faith believing such acts or omissions were carrying out, this Agreement, (e) any personal injuries or property damage arising out of the WMG & CP Site or the Work, and (f) any response, removal or remedial costs at the WMG & CP Site. This indemnification shall apply to any liabilities arising from occurrences both before and after the date of this Agreement. This indemnification and hold harmless provision shall cover all expenses reasonably incurred by such Trustee in defense or settlement of the aforementioned acts or omissions of the Trustees or the Grantor. Except for the payment of all expenses reasonably incurred, this indemnification shall not apply to any liability arising from a criminal proceeding where the Trustee's conduct in question was, or is alleged to be, unlawful.

**11.2. Survival.** This section shall survive the termination of this Agreement and the Trust Fund and the resignation or removal of the Trustee.

**12. INTERESTS NOT ASSIGNABLE OR SUBJECT TO CLAIMS OF CREDITORS**

The interest of the Grantor in the Trust Fund shall not be subject to anticipation or assignment nor subject to the claims of any creditor of the Grantor and any interest reserved to the Grantor shall be made available to such party only upon termination of the Trust Fund as provided herein.

**13. APPROVAL BY GRANTORS**

Any directions for actions to be taken by the Trustee on behalf of the Grantor pursuant to this Agreement shall be given to the Trustee in writing by the Grantor.

**14. CHOICE OF LAW**

This Agreement shall be administered, construed, and enforced according to the laws of the State of Illinois except to the extent that federal law shall apply to questions arising under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., or the National Contingency Plan, 40 C.F.R. Part 300, promulgated thereunder.

**15. INTERPRETATION**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular and the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The description heading for each Section and Subsection of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement. It is agreed that neither the act of entering into this Agreement nor any contribution to the Trust Fund nor any action taken under this Agreement shall be deemed to constitute an admission of any liability or fault on the part of the Trustee, the PSDs or the Grantor with respect to the Site or otherwise, nor does it constitute a commitment or agreement, either express or implied, by any or all of them to undertake any further activities outside the scope of this Agreement.

**16. SEPARATE DOCUMENTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**17. NOTICES**

Notices under this Agreement shall be deemed given by the Trustee when sent and received by the Trustee in accordance with this Section 17. Notices shall be (a) sent registered mail, return receipt requested, (b) by facsimile, (c) by a nationally recognized overnight courier, or (d) by messenger delivery. Notices to the Trustee shall be delivered to the Grantor to the following address:

Notices to the Grantor shall be sent to:

Jeffery D. Jeep, Esq.  
The Jeff Diver Group, L.L.C.  
1749 S. Naperville Rd. Suite 102  
Wheaton, IL 60187  
Phone (630)  
Fax: (630) 690-2812  
E-Mail

Donald Schultz  
Director of Finance  
City of Waukegan  
410 Robert V. Sabonjian Place  
Waukegan, IL 60085  
Phone (847)  
Fax: (847) 249-5296  
E-Mail:

Notices to the PSDs shall be sent to:

Stephen H. Armstrong, Esq.  
McGuireWoods LLP  
77 West Wacker Drive, Suite 4400  
Chicago, IL 60601-1681  
Phone (312)  
E-Mail

Jerome Maynard, Esq.  
Dykema Gossett PLLC  
55 East Monroe - Suite 3050  
Chicago, Illinois 60603  
Phone (312)  
Email:

Notice to the EPA pursuant to Section 3.1 shall be sent to:

Susan Tennenbaum



Office of Regional Counsel (C-41)  
EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604-3590  
Email:

**18. RESPONSE ACTION CONTRACTOR**

For the purposes of 42 U.S.C. §§ 9619(a) & (e), the Trustee under this Agreement is a response action contractor. The Grantor represents that the Trustee is providing services to the Grantor that relate to a response action being performed pursuant to 72 U.S.C. §§ 9606 or 9622.

**19. SUCCESSOR TRUSTEE**

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or in part, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all of the trusts, powers, immunities, privileges, protections and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that if, within one hundred eighty (180) days following any such conversion, sale, merger, consolidation or transfer, the Grantor shall remove the Trustee and appoint another qualified financial institution to serve as Trustee hereunder, neither the Trust nor the Grantor shall have any liability or obligations to such prior Trustee other than for payment of such prior Trustee's fees and charges, prorated as may be appropriate, through the date on which such removal is effective.

**20. ASSIGNMENT OF INTERESTS**

No assignment of the interest of any of the parties hereto shall be binding upon the Trustee unless and until written evidence of such assignment in form satisfactory to the Trustee shall be filed with and accepted by the Trustee and by EPA.

**21. ATTACHMENT OF TRUST FUND: COMPLIANCE WITH LEGAL CONSENT DECREES**

In the event the Trust Funds are attached, garnished, or levied upon by any writ, court Consent Decree or decree, the Trustee is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, Consent Decrees or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Trustee obeys or complies with any such writ, Consent Decree or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance notwithstanding that such writ, Consent Decree or decree is subsequently reversed, modified, annulled, set aside or vacated.

**22. CONFLICTING DEMANDS**

In the event that conflicting demands are made upon the Trustee for any situation not addressed in this Agreement, the Trustee may withhold performance of the terms of this Agreement until such time as said conflicting demands shall have been withdrawn or the rights of the respective parties shall have been settled by court adjudication, arbitration, joint Consent Decree or otherwise.

**WITNESS** the execution hereof of the Trustee as of the date first above written.

\_\_\_\_\_, not personally but solely as  
**Trustee of the Waukegan Manufactured Gas  
and Coke Plant Superfund Site Trust Fund**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**WITNESS** the execution hereof of the Grantor designated below as of the date first above written.

Entity: \_\_\_\_\_

By: \_\_\_\_\_

Name, printed: \_\_\_\_\_

Title: \_\_\_\_\_

Contact Person for Notices:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT B**

**SCHEDULE OF ESCROW AGENT FEE**

**Annual Charge**

Any out-of-pocket expenses, or extraordinary fees or expenses such as attorney's fees or messenger cost's, are additional and are not included in the above schedule.

The annual fee is billed in advance and payable prior to that year's service.

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IDJIM

**Payment Authorization**  
**for Waukegan MG & CP Site Soils O&M Trust Fund with**  
**\_\_\_\_\_ Bank, Account No. \_\_\_\_\_**  
**Exhibit A to Waukegan MG & CP Site Soils Trust Agreement**

The City of Waukegan, Illinois ("City"), hereby certifies that the attached invoice was for work completed and/or for the installation of materials in conformance with the City's obligations under the Waukegan MG & CP RA Consent Decree ("CD") and the Waukegan MG & CP Site Settlement, Funding and Indemnification Agreement ("Agreement"). The City further certifies that the costs for the work and/or materials are proper under the foregoing Agreement and CD and that the City authorizes and requests payment of the attached invoice which is also summarized below.

Contractor Name: \_\_\_\_\_ Amount: \_\_\_\_\_

Invoice Date: \_\_\_\_\_ Invoice Number: \_\_\_\_\_

**CERTIFICATION AND APPROVAL BY:**

\_\_\_\_\_  
Authorized Signer for City of Waukegan, IL

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Please send executed authorization and invoice by facsimile to:

[Trustee name, address, contact, phone, fax and email].

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